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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 571

CLIFFORD DWANE HELM,
Petitioner and Appellant Below,

vs.

STATE OF NEVADA,
Respondent and Appellee Below

PETITIONER'S SUPPORTING BRIEF

E. P. CARVILLE,
Counsel for Petitioner.

CARVILLE and CARVILLE,
Attorneys at Law,
Reno, Nevada,
Of Counsel for Petitioner.

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Points Involved

Petitioner seeks certiorari to review a judgment of the Supreme Court of Nevada (Court of last resort of that State) affirming petitioner's conviction of murder in the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, upon the grounds:

1. That the discharge of the first jury, duly impanelled and sworn by the trial court, amounted to an acquittal because petitioner was placed in jeopardy when the trial judge declared a mistrial of his case after said jury had been sworn, the District Attorney of Clark County, Nevada,

had made his opening statement to the jury, and said jury had been placed in the custody of officers for the duration of the trial.

2. That petitioner was denied due process of law when the first jury, duly impanelled and sworn to try his case, was discharged over the objections of petitioner and without his consent.

Argument

Jeopardy

No person shall be subject for the same offense to be twice put in jeopardy of life or limb (Article V, United States Constitution).

No person shall be subject for twice put in jeopardy for the same offense (Section 8, Article I, Constitution of Nevada).

No person shall be deprived of life, liberty or property without due process of law. (Article XIV, United States Constitution).

No person shall be deprived of life, liberty or property without due process of law (Section 8, Article I, Constitution of Nevada).

Jeopardy attaches "when a person is placed on trial on a valid indictment or information before a Court of competent jurisdiction and has pleaded and a jury has been duly impanelled and sworn".

Vol. 22 C. J. S. Criminal Law, Sec. 241, page 375;

McCarty v. *Zerhst,* 85 Federal (2nd) 640 (Certiorari denied 299, U. S. 610);

Vol. 15 American Jurisprudence, Criminal Law, Sec. 369, pages 46-47;

Ex parte Edward Lange, 18 Wall 163-205, 21 Law Edition, pages 872-888;

Cases cited in note to above case, 21 Law Edition, page 873 and 875;
United States v. *Watson*, Federal Case No. 16651;
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Hilands v. *Commonwealth* (Pa.), 2 Atlantic 70-75;
Oliveras v. *State* (Ga.), 47 S. E. 627 at 628;
People v. *Young* (Cal.), 279 Pac. 824-26;
People v. *Jackson* (Cal.), 74 Pac. (2nd) 243, Note 113 A. L. R. 1428-1429;
State v. *Rover*, 10 Nev. 388;
Ex parte Maxwell, 11 Nev. 428 at 434;
State v. *Pritchard*, 16 Nev. 101 at 106;
State v. *Whitman* (Utah), 74 Pac. (2nd) 696.

No question of "propter affectum" or "propter defectum" appear in federal cases cited to support Nevada Supreme Court Opinion.

50 C. J., page 792 (Definition of above terms).
State v. *Helm*, 209 Pac. (2nd) 187 *et seq.*

Petitioner herein was in no way responsible for court's directing a mistrial and discharge of the first jury.

Causes which create necessity to discharge a jury fall under one of the following headings.

(1) Court was compelled by law to be adjourned before a jury can agree upon a verdict.

(2) Where the person by his own conduct takes from the hands of the jury its power to investigate his case correctly.

(3) Where there is no possibility for the jury to agree upon and return a verdict.

(4) Without the consent of the petitioner.

22 C. J. S. Criminal Law, Sec. 259, page 395.

The required degree of necessity does not exist because of an error of law committed by the trial judge.

Oliveras v. *State* (*supra*);
People v. *Jackson* (*supra*);
State v. *Whitman* (*supra*).

Due Process of Law

Petitioner was entitled to protection of the Fourteenth Amendment of the United States Constitution on due process of law as well as protection of the Fifth Amendment of the United States Constitution.

Double jeopardy and due process of law descend to the United States and State Constitutions from the Common Law. They are fundamental rights.

While due process under the Fourteenth Amendment of the United States Constitution does not incorporate as such the specific guarantees of the Fifth Amendment a denial by a State of the rights or provisions specifically embodied in that amendment operates to deprive defendant of due process of law in this case.

Betts v. *Brady,* Head Notes 6 and 7, 317 United States, pages 455-480, 86 Law Edition 1595.

Particularly this is true as reversible error committed by the trial court at any point in the lower court's proceedings does not create an absolute or manifest necessity for dismissing a jury after jeopardy attaches without the consent of the petitioner.

A dangerous precedent is established if the trial court could declare a mistrial at any stage of the proceedings after jeopardy attaches when the court considered it had erred in a ruling during the progress of the trial.

Oliveras v. *State* (*supra*);
Hilands v. *Commonwealth* (*supra*);
State v. *Whitman* (*supra*).

A power to discharge a jury before a verdict cannot be arbitrarily used.

State v. *Smith* (Kan.), 24 Pac. 84.

The required degree of necessity does not exist because an error of law was committed by the trial judge.

Petitioner's right to protection from double jeopardy and due process are likewise constitutional rights afforded by the Fifth and Fourteenth Amendments of the United States Constitution and of Section 8, Article I of the Constitution of Nevada. This being so the Supreme law of both the United States and the State of Nevada is involved.

Palko v. *Connecticut*, 302 U. S. 319-329, Vol. 82 Law Edition 288 (Reference to citations in Appellant's brief pages 288-289);

Betts v. *Brady* (*supra*).

Jeopardy and due process being fundamental personal rights to liberty and justice we respectfully urge that their provisions must be protected and safeguarded.

Respectfully submitted,

E. P. CARVILLE,
Counsel for Petitioner.

CARVILLE and CARVILLE,
Attorneys at Law,
Reno, Nevada,
Of Counsel for Petitioner.